

**LABOR
COMMISSION
STATE OF UTAH**

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ON - THE - JOB

R. LEE ELLERTSON, Editor-in-Chief

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COMMISSIONER'S CORNER

By R. Lee Ellertson, Commissioner

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Frequently Asked Questions

In responding to questions from employers and employees, we find that many of the same questions are being asked repeatedly. In our continuing efforts to respond to the needs of the business community, we have compiled a list of our most frequently asked questions in an attempt to address some of your concerns. If you do not find the answer to your question among the following, please email us at rbarkdull@utah.gov and we will respond to you directly.

Q: What is the current Utah minimum wage?

A: As of September 1, 1997, the Utah minimum wage is \$5.15 per hour. Minor employees (under 18 years of age) may be paid \$4.25 per hour, as a training wage, for the first 90 days of employment. Employees receiving tips of at least \$30.00 per month may be paid a cash wage of \$2.13 per hour, if the total of the cash wage and the tips total at least \$5.15 per hour.

Q: How soon must an employer pay wages to an employee after terminating the employment of an employee? How soon if an employee resigns?

A: If the employee is separated by the employer, all wages are due immediately and payable within 24 hours of separation. If the employee does not have a written contract for a definite period and resigns, the wages become due and payable on the next regular



payday. These provisions may not apply to the earnings of a sales agent earning commissions.

Q: Is an employer required to provide paid vacation, holiday pay, sick leave or severance pay?

A: In general, Utah labor law does not require an employer to provide benefits to its employees. If an employer does establish a policy or practice of providing benefits they are expected to abide by the policy or practice in a non-discriminatory manner.

Q: What are the laws governing overtime?

A: Overtime is a provision of the Fair Labor Standards Act. Information on this Federal Law may be obtained from

The U.S. Dept. of Labor, Wage and Hour Division, Eagle Gate Tower West 10 East South Temple, Salt Lake City, Salt Lake City, Utah 84133. Telephone (801) 524-5706. [Home Page http://www.dol.gov](http://www.dol.gov).

Q: Is an employer allowed to make a deduction from an employee's wages for till shortages, cash advances, items purchased from the employer and etc?

A: The Utah Labor Rules address these issues and provide the criteria under which certain deductions may be made from an employee's wages. In most cases an employee's signature is required. Rule R610-3-18.

Q: What can an employee do if an employer does not pay wages to the employee?

A: The employee may file a wage claim against the employer with the Labor Commission. Other options available to the employee include filing an action in small claims court or contacting an attorney.

Q: Who is responsible to pay the cost of uniforms required by an employer?

A: If an employer requires a specific uniform to be worn as a condition of employment, the employer must furnish the uniform free of charge, but can require a refundable deposit on the uniform.

Q: Are employers required to provide rest breaks and meal periods?

A: Minors (under 18 years of age) are entitled to a meal period of at least 30 minutes not later than five hours from the beginning of their shift. A rest break is required for minors of at least 10 minutes for every three hour period or part thereof that is worked. There are no state or federal laws that require and employer to provide lunch breaks or rest periods for adult workers. Most employers in the interest of efficiency and good employee relations will establish a policy governing leave and break periods.

Q: At what ages are minors allowed to do certain jobs?

A: Minors can work in retail trade and the restaurant industry and do office work and other types of non-hazardous work beginning at age 14. Certain other types of work such as newspaper delivery, lawn care, babysitting, etc. can be performed at younger ages. There are hour restrictions that apply to minors under the age of 16. Child Labor Laws prohibit minors under 18 from working in 17 different occupations determined to be hazardous. A list of hazardous occupations is on the web site at <http://www.uosh.utah.gov/>

Q: Does the State of Utah require work permits for minors?

A: Employers in Utah are free to hire a minor without a work permit. The expectation is that employers in employing minors will be complying with the standards concerning age-appropriate jobs, lunches and breaks, and hourly restrictions for minors under age 16. There is a process in the statute where in limited, special circumstances, a request for a work authorization can be made to the Commission if the employment of the minor, such as in the case of a child actor, is going to involve odd work hours or other variances from the normal standards set forth in the statute or rules.

Q: Are there any rules governing being on-call or required non-paid training?

A: In reverse Order, under Utah Rules, an employer is required to pay an employee for required attendance at training. If an individual employee is required to attend training and is not paid for that time they have the right to file for the unpaid wages as they would any other unpaid wage. On call status is not normally considered work time. However, the FLSA deals again with work required while on call and all hours of required travel and work performance are normally subject to overtime pay provisions of the Fair Labor Standards Act. The Wage and Hour Division of the Department of Labor has references to published position papers on these issues. <http://www.dol.gov>

Q: What is Utah's Law on disability, FMLA, time-off, discrimination and where can I obtain a copy?

A: Utah has no independent statute on disability determination, FMLA, or paid and/or unpaid time-off. The Department of Labor website has comprehensive information on these subjects. Utah has a statute on discrimination and it is set out at Utah Code Annotated Section 34A-5-101 et seq. Like Title VII of the Civil Rights Act of 1964, Utah law prohibits discrimination on the basis of race, color, religion, sex, national origin, age or disability. Anyone who believes they have been subject to discrimination on a job has a right to file a charge with the UALD of the Utah Labor Commission.

Q: Does an employer have to pay for drive time to & from a job?

A: An employee is responsible for getting

himself/herself from home to a designated work location and home at night. If an employer sends an employee to a remote work location to perform a job function they are responsible for paying wages for the travel time. An employer is within his right to establish differing rates of pay for drive time as opposed to skilled work time; but, must establish a policy that is understood by employees to avoid claims of unpaid wages. The federal website has discussions regarding drive time rulings that have been made under the FLSA. <http://www.dol.gov>

Q: I was fired unfairly. What can I do about it?

A: Consult an attorney about a wrongful discharge private action. The issue of discharge is not addressed in the Labor Code, except that unpaid wages are due within 24 hours. The area of employment discrimination does address illegal and discriminatory discharge; therefore, if you think you have been illegally discriminated against you may want to consult the Anti-Discrimination Division of the Utah Labor Commission.

Q: Where can I find answers to workers' compensation questions?

A: The Division of Industrial Accidents, Utah Labor Commission, has staff available that can assist you with your workers' compensation claim. You can reach our workers' compensation intake staff by calling (801)530-6800 or our toll-free number for those employees outside of the Salt Lake area is (800)530-5090. The Commission also has a written publication available that can help an injured employee through the workers' compensation process. This publication entitled, "Employee's Guide to Workers' Compensation", is free of charge and explains the basic rights and responsibilities of the injured employee.



Q: If I am hurt on the job, what should I do?

A: Report the accident to your employer immediately, no matter how slight. Ask your employer for the name of their workers' compensation insurance carrier and the telephone number.

Q: Who pays for workers' compensation insurance?

A: Your employer pays for your workers' compensation insurance. Workers' compensation is a no-fault system and is the exclusive remedy for a worker who is injured on-the-job.

Q: Where can I obtain a copy of UOSH rules and regulations, as well as a federal equivalent?

A: UOSH Rules can be located at: <http://www.uosh.utah.gov/>
Federal Standards can be located at: <http://www.osha.gov/>
They may also be purchased from Utah OSHA (UOSH): 160 East 300 South
P.O. Box 146650
Salt Lake City, Ut 84114

Cost : Utah Standards: \$10.00 + \$2.15 Shipping
Federal Standards:

1910: \$58.00 + \$2.15 Shipping

1910.1000 to End: \$42.00 + \$2.15 Shipping

1926: \$47.00 + \$2.15 Shipping

(Make checks to the Utah Labor Commission)

Q: Are there any training programs available for UOSH or OSHA rules and regulations?

A: Classes are given on specific standards such as Lockout/Tag out or Powered Industrial Trucks or areas such as Construction. For information call UOSH Consultation at 801-530-6868 or the Utah Safety Council at 801-262-5400

Q: If I feel there are hazards in my workplace, what can I do about it?

A: You can file a complaint with Utah OSHA (UOSH) at (801) 530-6437.

“So..... What is Information Technology doing for the Labor Commission and its customers?”

By William Gerow – IT Manager

As little as fifteen years ago, the primary method of doing business at the Utah Labor Commission was to keep investigations, cases, proceedings and inspections organized on a piece of paper in an alphabetized folder inside a file cabinet. It was a tedious, manual world. Today, almost every piece of information is contained in computer memory. It's still a tedious process, but now the computer does it.

Over the past twelve years, the Information Technology (IT) group has been writing case management systems for the different divisions at the Labor Commission.

Systems to track injuries in the workplace, which employers have workers' compensations insurance (and which ones don't), who is covered under the Employers Reinsurance Fund and the Uninsured Employers Fund have been created for the Industrial Accidents Division.

The Antidiscrimination Division now has applications to track who is discriminated against, who is not being fairly treated when purchasing, leasing or selling property, as well as a system to help employees who have not been paid wages by their employer.

Boiler inspectors, pressure vessel inspectors and elevator inspectors use their case management systems to keep track of what to inspect, where to find it and when to be there.

Judges use their case management system, affectionately known as SPUD (I have no clue where that acronym came from or what it means) to track what cases need hearings and when.

Accounting now has a system written by the IT group to track all deposits made at the Commission. Accountant Bobie Tupou says, “We used to keep all deposit history by hand. If someone needed information we would have to search through folder after folder to find a receipt. Now, if ANYONE at the Commission needs to know about a specific check, we can search by check number, a key word, an approximate date or even guess at an amount and we have the information instantly.”



The IT group has created twelve main case tracking systems and about the same number of supporting subsystems to help the Labor Commission “do more with less.” The size of the Commission has changed very little in the last fifteen years. This is partly due to the computer and the work of the IT group.

In addition to writing computer code, IT installs and maintains the computer hardware on everyone's desk. Shoot, some people even have two PCs so they can get more work done. We make sure the local area network (LAN) which connects everyone's computer together so we can communicate, is up and running at all times. The IT group also maintains all peripheral devices like printers, projectors, faxes, CDs, DVDs and scanners.

Are we done? Is everything so perfect that all we have to do is kick our feet up and eat donuts while sipping a pop? Heck no! There are enough requests for programming projects for the IT group to remain busy for the next twelve years. And that doesn't even take into consideration the territory the WEB has opened up. We are poised to explore all that this information highway can do for not just the Commission but the people of Utah as well.

So, get out of our way now and let us get back to work!

The “Rules Corner”

The Utah Legislature has granted the Labor Commission authority to adopt rules for administration of some programs within the Commission’s jurisdiction. Pursuant to that authority, the Commission is engaged in the following rule-making activity.



I. RULES UNDER CONSIDERATION:

RULE NUMBER	DESCRIPTION	STATUS
R612-2-22 Industrial Accidents	Medical Records: The Commission has appointed an ad hoc committee to review Commission rules regarding release and use of medical records in light of HIPPA.	Upon completion, the Committee’s report will be presented to the Advisory Council
R614-1 UOSH	Occupational Safety & Health: The Commission is reviewing existing rules regarding 1) employer and employee responsibility; 2) safety committees; 3) emergency action plans; 4) emergency showers, bubblers and eye washers; and 5) personal protective equipment.	To be presented for public discussion at Open Meeting on February 2, 2005.
R616-3-3 Safety	Elevators and Escalators - incorporation of the 2004 edition of ASME A17.1 and the 2003 edition of ASME A18.1 safety codes for elevators and escalators.	Published in Utah Bulletin on Jan. 1, 2005.
R616-2-3 Safety	Boilers and Pressure Vessels - incorporation of the 2004 edition of ASME Sections I, IV, VIII and B31-1. Also the incorporation of the NVIC (NB-23) December 31, 2004 edition.	Published in Utah Bulletin on Jan. 15, 2005.

Utah Court of Appeals Decisions

By Alan L. Hennebold

In an unpublished decision issued November 21, 2004, the Utah Court of Appeals ruled that an injured worker who is unsuccessful in claiming benefits under the Workers’ Compensation Act cannot later pursue the claim under the Occupational Disease Act.

The Court of Appeal’s decision in *Acosta v. Salt Lake Regional Medical Center, et al.*, Case No. 20030907, 2004 UT App 411, noted that Acosta originally filed a workers’ compensation claim alleging her back problems were the result of an accident at work. That claim was rejected by the Labor Commission. Acosta then filed a new claim for benefits on the theory that her back problems were the result of a work-related disease. The

Commission refused to consider this new claim on the grounds that, under established principles of res judicata, the occupational disease claim should have been raised at the same time as the workers’ compensation claim. Acosta appealed the Commission’s decision to the Utah Court of Appeals.

The Court of Appeals affirmed the Commission’s decision, noting that res judicata “bars Acosta’s occupational disease claim because . . . (that claim) is identical, in fact and evidence, to the previous claim. Acosta could and should have brought the occupational disease claim together with the workers’ compensation claim, and the previous clam resulted in a final judgment. Thus, the Commission correctly dismissed Acosta’s occupational disease claim as barred by res judicata.”



The Education and Outreach Program: Creative Solutions, Better Service

By Elena Bensor – Outreach Coordinator, Utah Antidiscrimination and Labor Division

In February, 2004, The Utah Antidiscrimination & Labor Division (UALD), through funding awarded by the Department of Housing and Urban Development, created the Education and Outreach program.

Throughout the course of the year, the Education and Outreach Program has implemented creative solutions while educating our community about the Fair Housing Act, Federal Equal Employment Opportunity (EEOC) Laws, and other services provided by the division. These services include payment of wages, the Utah minimum wage act, and state laws governing the employment of minors.

One of our department goals has always been that of strengthening community ties by fostering partnerships, while simultaneously increasing the efficiency and quality of services provided to our community. As a result, in June of 2004, the division was the recipient of the Fair Housing Assistance Program National Education and Outreach Award, sponsored by the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity.

In the area of partnerships, in April 2004 we collaborated with the Utah Apartment Association's Annual Fair Housing conference. The conference was designed to assist apartment complex managers and landlords with an increased understanding of fair housing laws, and encourage the development of best business practices through factual and up to date information.

During the month of September 2004, our division conducted a two-day seminar titled "An Advocate's Guide to Employment and Housing Complaints" in the cities of Ogden, Salt Lake and Logan. These seminars, conducted in partnership with the EEOC Phoenix Regional office were well received with approximately two-hundred people in attendance,

representing over 30 different community, state and religious organizations.

For the coming year, the Division will continue to offer training and informational sessions to the general public and community-based organizations,

while expanding our focus in serving underserved rural communities around the state. Additionally, we will offer Fair Housing quarterly certification sessions to landlords and apartment managers, and therefore continue to provide education and outreach services where they are needed the most.

For more information about the Education and Outreach Program

please contact:

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(801) 530-6918
elenabensor@utah.gov.

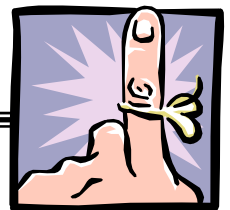


REMINDER!

Utah Labor Commission Annual Workplace Safety Poster Contest

Open to all Middle/Jr. High School Students throughout Utah. \$500 Grand Prize with matching prize awarded to sponsoring school!

Posters due by March 1, 2005. For details or questions, call Robyn Barkdull at (801) 530-6815 or rbarkdull@utah.gov



Pre-Employment Inquiry and the Bona Fide Occupational Qualification

By Hap Stephens, Case Manager, Utah Antidiscrimination and Labor Division

I absolutely disavow any intent to make the title to this article appear to be bureaucratic gobble-de-gook. The Utah Antidiscrimination and Labor Division (UALD) receives periodic telephone calls asking advice on creating job standards and the advisability of asking certain pre-employment questions. There is no better place for an employer to start their commitment to equal employment opportunity than creating a proper job description. Employers must assure that all qualified individuals are given an opportunity to compete for available positions. Although Utah is an "At Will" employment state, virtually all employers (those with more than 15 employees) are required to comply with the non-discrimination provisions of the Utah Antidiscrimination Act of 1965, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, as amended. Those statutes, both state and federal, restrict employers from making decisions which impact employees or potential employees based on their race, color, religion, sex (gender), national origin, disability or age (over 40).

Because pre-employment applications and interviews are the first impression for employer and employee alike, it is critical that both parties make this a positive experience. Historically, pre-employment screening has been used as a means of denying women and minorities an opportunity for employment. It is the employer's obligation to assure that all questions asked on an application for employment or during an oral interview are designed solely to illicit information absolutely necessary and relevant in judging an applicant's competence or qualification for the job in question. The Utah Labor Commission has established a Rule, (Rule 606-2-2) which sets out reasonable standards that employers should follow in their pre-employment hiring applications and interviews. A Copy of this Rule is available at www.laborcommission.utah.gov. Additionally, the

Equal Employment Opportunity Commission has a comprehensive guide on its web cite at www.eeoc.gov. Recently we have received a number of inquiries

concerning the use of arrest records, convictions for crimes (both felony and misdemeanor) and credit checks in pre-employment inquiries. Using these factors to establish a basis for refusal to hire may lead to complaints of discrimination. Any employment practice that discourages a group of individuals within a

protected class from submitting an application or being considered for a position may have a disparate impact that is unlawfully discriminatory. Certain populations have a higher incidence of arrests, non-felony convictions and credit problems than the general population. Although an employer may ask these queries universally of all applicants, the impact may be to exclude a disproportionate number of people of a protected class. The purpose for an employer's inquiry should have some logical connection for the available position. For example, it may be appropriate to ask whether an applicant has a history of any type of felony theft conviction for a position where the individual will be required to handle money. Another example is that it may appear to be reasonable to ask whether a prospective employee has an arrest record, but what does this really tell you? An arrest does not indicate that a person has committed any crime. Focus your inquiry on, "what is the business necessity for asking this question?"

All employers have the right to establish bona fide occupational qualifications (BFOQ). Sex/Gender is often the most difficult class for a business attempting to establish a BFOQ. Gender based qualifying standards are often closely scrutinized and will be interpreted narrowly by the EEOC and this Division. Title 29, CFR 1604.1-11 sets out the federal regulations governing standards for an employer to follow when dealing with gendercontinued



based considerations. A gender-based standard must be justified by business necessity. I was recently asked if it were possible to place a gender restriction on hiring a therapist in a school for troubled teens. The human resource specialist had a long list of reasons why, in a program limited to teenage girls, a male therapist would be unacceptable to provide counseling. Those reasons included surveys taken among the students indicating they would not discuss certain issues with a male therapist, previous difficulty with male therapists, and the rest of the staff, though mixed, did not have the direct one on one contact required for individual counseling and running single gender groups. After listening to the level of concern for hiring with a gender based BFOQ, I had to agree there seemed to be a



qualifications, and identify the business necessity before advertising a position with a gender based limitation.

Even with the surveys and justification completed to warrant a gender limited BFOQ, I had to suggest advertising that position may lead to a challenge by a man believing he had been illegally excluded based on his protected class standing.

The Division still determines issues on a case by case basis. There are no absolute, definitive guidelines available for each business to adopt for its' employment standards.

However, any business committed that they will hire promote, discipline or terminate without regard to a person's race, color, sex, national origin, age (over 40), disability, or religion, will find little or no problem with our office.

valid business basis for making that determination. However, the burden still lies with the individual business to establish its reasons, set out the basis for the